IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16-10-2006

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR

W.P.No.8897 of 1997

P.L.Chidambaram ... Petitioner

vs.

1. The Chairman-cum-Managing Director,
The New India Assurance Co. Ltd.,
87, M.G.Road, Mumbai.

2. The Appellate Authority (Regional Manager),
The New India Assurance Co. Ltd.,
Obli Towers, 594, D.B.Road, R.S.Puram,
Coimbatore.

3. The Divisional Manager
(Competent Authority),
New India Assurance Co. Ltd.,
Divisional Office,
Jerome Building, II Floor,
Tiruchirapalli. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of certiorarified mandamus, calling for the records of the third respondent in his proceedings dated 20.6.1995 and 10.7.1995 and confirmed in appeal by the second respondent by his order dated 13.2.1996 and confirmed again by the first respondent's order dated 26.9.1996 and quash the said orders and direct the respondents 1 to 3 to pay all arrears of salary and consequential benefits with-held on account of the punishment inflicted on the petitioner by reduction of basic salary in four stages from Rs.3,040/- to Rs.2,560/- per month.

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For petitioner : Mr.R.Yashod Varadhan
For respondents: Mr.A.Thayaparan

O R D E R

The petitioner while working as Development Officer in the first respondent-New India Assurance Company at Trichy Branch, is alleged to have issued a motor vehicle's cover note No.435457, dated 25.9.1990 in favour of one Mr.Rajendran indemnifying his vehicle TNJ-344 against third party risk after knowing that the vehicle had met with an accident. The petitioner had collected the premium of Rs.1,245/- on 25.9.1990 and issued a cover note without inspection of the vehicle and that he altered the date of risk from 26.9.1990 to 25.9.1990 to accommodate the claim of the insured for an accident that took place on 25.9.1990. Therefore, the

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Company was saddled with a liability of Rs.1,81,705/- which would not have arisen otherwise. A charge memo was issued by the third respondent on 22.2.1994 on the abovesaid imputations. The petitioner refuted all the allegations in his explanation. Third respondent thereafter served notice on 6.5.1994 stating that the explanation was not satisfactory and a domestic enquiry was to be instituted. Enquiry officer was appointed and enquiry was held and a report dated 5.1.1995 was submitted. The enquiry officer held that charges 1, 2, 4, 5 and 6 are proved and charge No.3 was not proved. Aggrieved by the findings of the enquiry officer, the petitioner made a representation dated 2.2.1995 to the third respondent, the competent authority. Based on enquiry report dated 5.1.1995 and considering the representation dated 2.2.1995, the competent authority while concurring with the findings of the enquiry officer, imposed the punishment of reduction of basic pay by four stages from Rs.3,040/- to Rs.2,560/- per month. The petitioner thereafter preferred an appeal to the appellate authority and the same was dismissed on 13.2.1996. The petitioner thereafter filed a review before the first respondent pointing out the irregularities in the order of the lower authorities. The first respondent, however, refused to interfere with the order of the lower authorities and confirmed the same by his order dated 26.9.1996 communicated to the petitioner on 30.10.1996. It is against the concurrent findings of the authorities that the present writ petition has been filed.

2. The charges framed against the petitioner read as follows:-

> "a) issuance of Motor Covernote 435457 dtd. 25.09.1990 in favour of Mr.N.Rajendran covering his vehicle TNJ 344 against T.P.Risk after knowing that the vehicle had met with an accident.
>
> b) collecting the premium of Rs.1245/- on next day i.e. 26.09.1990.
>
> c) issuing the Covernote without inspection of the vehicle as required under the rules.
>
> d) altering the risk date from 26.09.1990 to that of 25.09.1990 in his own handwriting.
>
> e) collecting the premiums on 26.09.1990 and antedating the risk from 25.09.1990 deliberately and by accepting the risk antedating the cover and thereby saddling the Company with a T.P. claim liability of Rs.181705/- which otherwise would not have arisen at all."

3. The enquiry officer found that five out of six charges are proved. The findings of the enquiry officer will be worth mentioning here:-

> "From the various statements made by the CO, it is clear that though in the beginning he was denying the existence of the system, subsequently blamed the BM for not implementing the system and has finally confirmed

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the existence of the reporting system. In fact both DW.1 and DW.2 have replied identically that in case covernote is issued/collection is made after close of cash hours the same has to be brought to the notice of the BM. For the specific question by Defence 'what method they were adopting in informing the BM' the witnesses replied that they used to inform orally or by phone and they never said 'lack of procedure in informing the BM' as stated by the CO in his counter brief."

"Charge No.1: This is in connection with the CO deliberately issuing under his signature motor covernote 435457/25-9-90 in favour of Mr.N.Rajendran for his vehicle TNJ 344 against Third party risk after knowing that the vehicle had met with an accident.

Mr.S.Singaravelu (MW1) the then Branch Manager of Trichy branch where the CO is working, in his oral evidence, inter alia, says that he had given clear cut instructions to the branch development officials, that in case a covernote is issued and the remittance is not made on the same day to the office, they must inform the Branch Manager either orally, or in writing, or by phone, or by telegram about the late issuance of covernote or take signature from the BM on the covernote. He further says that since RO/DO have issued circulars in this regard he has orally instructed all development officials to follow the circulars by giving copies of the circulars to them and the same was followed by all development officials. Mr.Singaravelu further adds that the CO was in the habit of taking acknowledgements for all cases and even if the other person is not signing on the document, the CO will insist to sign on the document. In the instant case of covernote 435457 (Ex.1) he has not received any information from the CO and in case the CO had given the information, he would have insisted the witness at least on the following day to sign on the covernote. If we go through the copy of the covernote 435457 (Ex.1) no signature of the witness is available."

"Mr.L.Sundaresan (MW 3) the RO vigilance officer, who had conducted the investigation in the instant case, due to close proximate claim, inter alia, says that he had two rounds of discussions with the CO and in both the rounds the CO informed him that the insured Mr.N.Rajendran is not known to him directly and that he has received the premium through M/s.Alamelumangai Finance. When Mr.Sundaresan checked up with the CO as to why the premium was not remitted in the office on 25-9-90, if the same has been collected on 25-9-90 the CO replied that he did not remit the cash as the cash hours of accepting the premium by the collective

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cashier has been closed. When the witness questioned the CO why the matter was not brought to the notice of the Branch Manager, the CO answered that he does not remember what has happened. The CO has accepted to the witness that he (CO) only filled in the proposal form (Ex.4) and when the witness asked the CO how he got the signature of the insured the CO had no answer."

"Mr.S.Narayanan (DW 2) a typist in Trichy branch in his oral evidence, inter alia, says that on 25-9-90 at about 4.45 PM he had informed the CO that he wanted to go out on personal work with the CO at 5 PM. In the meantime a representative of M/s.Alamelumangai Finance approached the CO for a motor covernote. The CO asked the witness to wait for some time to enable him to complete his job. The CO issued the covernote and given to the representative of M/s.Alamelumangai Finance. The witness further says that when he asked CO whether they can leave the office, the CO told him to wait a little while so that he can inform the Branch Manager about the issuance of covernote. Thereafter both went out only after the close of office hours.

During the cross examination by PO, the witness further said that he knows the representative of M/s.Alamelumangai Finance, who used to visit the branch frequently and some times used to come to the witness seat for a chat. But when the PO asked the name of the representative, the witness replied that he does not know the name of the representative."

"Further according to the written statement of the insured Mr.Rajendran, given to the independent investigator Mr.R.Venugopalan, (Ex.7) the previous insurance for the vehicle has expired on 10-8-90 and as the vehicle was under major repairs he has not renewed and on 25-9-90 after completing the repairs to the vehicle, he has paid the premium to CO, obtained covernote and handed over to his driver Mr.Sirazuddin.

Mr.L.Sundaresan (MW 3) adds in his oral evidence, that when he had discussed with the insured, he has informed that he has paid the renewal premium in cash to the financier even before expiry of the previous policy as he does not directly deal with the insurance company, since he does not know the procedure. According to the witness, the insured further said that he came to know about the accident to his vehicle on the early morning of 26-9-90. As the police wanted the vehicle documents and as he was not in possession of any of the documents, he went to the financier on the morning on 26-9-90 but he was made to wait till the evening for collecting the documents."

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"From the sequence of facts revealed during the oral evidence of various witnesses, evidence from the documents submitted and based on circumstantial evidence, it is very clear that the CO has deliberately issued under his signature motor covernote 435457 (Ex.1) in favour of Mr.N.Rajendran covering vehicle No.TNJ 344 against TP risk after knowing that the vehicle had met with an accident and accordingly the charge has been proved."

"Charge No.2: This is in connection with the CO after covering the risk collected the premium only on 26-9-90."

"Mr.Singaravelu (MW 1) the then Branch Manager in his oral evidence, inter alia, says that the CO is in the habit of taking acknowledgements for all cases and even if the other person is not signing on the document the CO will insist to sign on the document. In the instant case of covernote 435457 (Ex.1) he has not received any intimation from the CO. In case if the CO had given intimation he would have insisted the witness at least on the following day to sign on the covernote. If we go through the copy of the covernote 435457 (Ex.1) no signature of the witness is available."

"Further though the CO in his letter to Sr.D.M. (Ex.5) says that he has received the proposal and premium on the evening of 25-9-90 through the messenger of M/s.Alamelumangai Finance, the insured in his written statement to the investigator Mr.R.Venugopalan (Ex.7), inter alia, says that after completion of repairs to his vehicle on 25-9-90 he has paid the premium to CO, obtained the covernote and given to his driver Mr.Sirazuddin."

"From the sequence of facts revealed, it is very clear that though the previous insurance expired on 10-8-90, the same was not renewed by the financier and when the insured went to him to collect the vehicle documents including the insurance policy, for showing to the police, in view of the accident to the vehicle, the financier realised that the insurance for the vehicle was not renewed and thereafter approached the CO for a back dated covernote from 25-9-90 and the CO might have yielded to the pressure of the financier and issued covernote 435457 (Ex.1) on 26-9-90 back dating from 25-9-90. This can be further confirmed that though the CO was careful in writing the date of issue as 25-9-90, while writing the effective date of commencement of risk he has mentioned as 26-9-90 and subsequently corrected as 25-9-90.

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> From the sequence of facts revealed during oral evidence of witnesses, based on the documentary evidence and based on the circumstantial evidence, it is very clear that the CO after covering the risk from 25-9-90 to 24-9-91 on 26-9-90 collected the premium of Rs.1245/- only on 26-9-90 and accounted under receipt No.439326, collection No.3664 (Ex.2) and accordingly the charge has been proved."

Consequent thereupon, the punishment was imposed as stated above.

4. Learned counsel for the petitioner, at the time of final disposal of the writ petition, submitted his plea on the following issues:-

(i) The so-called circular requiring the Development Officers to inform the Branch Manager either orally or in writing or by phone or telegram about the late issuance of cover note or get the signature of the Branch Manager on the document, was not produced at the time of enquiry. Failure on the part of the Department to produce the circular and refusal of the Branch Manager to give a statement in writing, vitiates the entire disciplinary proceedings. Since the enquiry officer has not produced the said circular, the material document, there is violation of principles of natural justice.

(ii) Without even discussing any material and without such material being made available to the enquiry officer, a decision has been taken on such document, which would effectively mean that it was not put to the petitioner, nor before the authority relying on the said circular to substantiate the charges against the petitioner and therefore, there is violation of principles of natural justice.

(iii) As stated earlier, the petitioner was not given an opportunity to cross-examine the insured and the private investigator.

(iv) The findings of the enquiry officer are based on conjectures and surmises.

(v) Respondents 2 and 3 have not made independent application of mind on the issue raised and since there was no finding by the appellate authority about the non-production of the circular, it is a ground to set aside such proceedings on the ground of violation of principles of natural justice.

In support of his contentions, learned counsel for the petitioner would rely on the decision of the Supreme Court reported in AIR 1977 SC 1867 (Rohtas Industries vs. R.Industries Mazdoor Sangh).

5. Learned counsel for the respondents-New India Assurance Company would support the findings and the order of the respondents as one passed following the due process of law, in accordance with the principles of natural justice and contend that this Court, in exercise of it's power under Article 226 of the Constitution of India, will not interfere in departmental proceedings, particularly in the case of departmental enquiry on the delinquent officer conducted in accordance with the settled

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legal principles. He would submit that the findings of the departmental authorities and the proceedings should not be ordinarily interfered with as a matter of course. In support of his contentions, learned counsel for the respondents would rely on the following authorities:-

(i) AIR 1999 SC 2407 (Bank of India vs. Degala Suryanarayana);

(ii) AIR 2000 SC 22 (High Court of Judicature at Bombay vs. Shashikant S.Patil);

(iii) 2003 (3) CTC 494 (SC) (Lalit Popli vs. Canara Bank) and

(iv) 2004 (2) CTC 277 (Madras High Court) (Akbar.G. vs. Union of India).

6. As regards the first and second contentions about non-furnishing of the circular and its effect, it is the stand of the Department that the circular was in vogue for several years and the petitioner, having served in the institution, cannot plead ignorance of such circular. Such circular is not a document within the exclusive domain of the respondents. The evidence adduced in the enquiry proceedings clearly shows that the circular was in vogue and followed by all the Branches of the respondents. Since the circular is a document given by the respondents to all their Branches, the petitioner cannot say that he has no knowledge of the same. In this connection, it is worthwhile to quote the observations of the enquiry officer:

> "As explained earlier while discussing on charge No.1 above, almost all the witnesses have given identical statements that the branch cash hours closes by 4.30 PM and if any document is issued after cash hours, the same has to be brought to the notice of the Branch Manager either orally or in writing or by phone or by telegram as per the instructions of the BM and all the devep. officials were following the instructions."

In this regard, the evidence of witnesses extracted earlier clearly establishes that the circular was acted upon by all development officers including the petitioner. Hence, nothing turns on it.

7. The third contention is with regard to the cross-examination of the insured and the private investigating officer.

(i) It is contended by the petitioner that the insured N.Rajendran's statement Ex.7 cannot be relied upon under law unless the said person is examined. However, in the course of the enquiry proceedings, a copy of the said statement was given to the petitioner and based on such statement, the petitioner had cross-examined several witnesses. It was held by the enquiry officer that if there is any doubt or genuineness of the statement-Ex.7, the petitioner could have himself brought the insured as a defence witness to disprove the genuineness of such statement, because the person who got the insurance policy, namely Rajendran was known to the petitioner through Mr.R.Gopalakrishnan of M/s.Alamelumangai Finance and it

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is only through the said person that the insured has been introduced for the policy which is under issue. Having cited R.Gopalakrishnan of M/s.Alamelumangai Finance as a defence witness, there is no impediment on the part of the petitioner to bring Rajendran, the insured also, as a defence witness if he so desires. Therefore, to state that the statement of the insured Rajendran should not be relied upon, was rightly rejected by the enquiry officer.

(ii) In response to the report of the enquiry officer, by his statement dated 2.2.1995, the petitioner submitted that the presenting officer relied upon the statement alleged to have been made by the insured to the private investigator. He accepts that he had verified the statement and received it. However, he submits that it cannot be proved without placing the person for enquiry. The petitioner would draw an analogy to the statement by saying that the statement has been made to a Police Officer in the course of investigation and therefore, without producing the person, such statement becomes inadmissible on the ground that it is akin to a statement made under Section 162 Cr.P.C. The petitioner therefore submits that merely because he received the statement, it would not amount to admission of guilt. The petitioner's stand is that the person whose statement has been recorded, has to be cross-examined to verify the veracity of such statement and the conclusion made by the enquiry officer based on such statement, is in violation of the principles of natural justice. Though a reference has been made to the cross-examination of the insured person, there is no such request to cross-examine the insured and the private investigating officer. The petitioner was given an opportunity to cross-examine the department witness. If he so wanted, nothing prevented him to ask for the production of the person whose statement he is aggrieved.

8. The next contention is that as regards the evidence of D.W.2, it was discarded without any basis and the findings of the enquiry officer are based on irrelevant factors. The reasons given by the enquiry officer are based on some material and the enquiry officer has come to the conclusion that the claim by the petitioner about the presence of DW2 cannot be accepted. It is for the petitioner to show in real terms as to how the witness came to be there at the time of execution of the policy and his role at that point of time. Except stating that he was present, the witness does not even know the name of the customer. In any event, the enquiry officer does not believe the witness and has given reasons. It is not for this Court to re-appreciate such evidence.

9. The last and final contention is that respondents 2 and 3 have not considered the appeal in it's proper perspective and rejected the same perfunctorily. The order of the appellate authorities show that they have considered all the material documents and dealt with the matter properly. There is no allegation that hearing was not proper or that the authorities did not give an opportunity to effectively participate the enquiry or the appeal.

10. Learned counsel for the petitioner relied on the decision of the Supreme Court reported in AIR 1977 SC 1867 (cited supra), which reads as follows:-

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"2. We have admitted the appeal and have heard learned counsel for both sides. The learned counsel for the respondents strenuously contends that the management has, by its conduct, forfeited its right to examine witnesses before the Tribunal. We are not impressed by this argument. The Tribunal refused to allow the management an opportunity to examine witnesses on the sole ground that it had not earlier submitted the written statement. That ground in an industrial matter, would not be sufficient to refuse examination of witnesses when the management later on pressed for it. This is against the principles of natural justice. It appears from the award that the Tribunal came to its conclusion in respect of item No.6 relying upon certain documents without giving an opportunity to the management to produce evidence in rebuttal. In view of this we cannot sustain the award with regard to item No.6. The appeal is allowed and the matter is remitted back to the Tribunal for disposing item No.6 referred to above preferably within 3 months from receipt of this order after giving reasonable opportunity to both parties. The award in respect of other items stands. There will be no order as to costs."

11. On going through the above decision (AIR 1977 SC 1867) relied on by learned counsel for the petitioner, it is seen that in the present case, from the pleadings, it is evident that there was no request to cross-examine any particular witness and consequently the question of refusal does not arise. Therefore, the reliance on the above mentioned decision is of no avail.

12. On the contrary, the various decisions relied on by learned counsel for the respondents clearly support the view that in matters of disciplinary proceedings, there is very limited scope for this Court under Article 226 of the Constitution of India to interfere with such proceedings.

13. It will be useful to extract the relevant portion of the decisions:-

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(i) AIR 2000 SC 22:

"16. The Division Bench of the High Court seems to have approached the case as though it was an appeal against the order of the administrative/ disciplinary authority of the High Court. Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such inquiry or if the decision of the authority is vitiated by considerations extraneous to

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the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority (in this case the Disciplinary Committee of the High Court) is the sole judge of the facts, if the inquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution.

17. In State of Andhra Pradesh v. S.Sree Rama Rao, (1964) 3 SCR 25 : (AIR 1963 SC 1723) this Court has stated so and further observed thus:

> "The High Court is not constituted in a proceeding under Art.226 of the Constitution as a Court of appeal over the decision of the authorities holding departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf and whether the rules of natural justice are not violated. Whether there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Art.226 to review the evidence and to arrive at an independent finding on the evidence."

18. The above position has been reiterated by this Court in subsequent decisions. One of them is B.C.Chaturvedi v. Union of India, (1995) 6 SCC 749 : (1995 AIR SCW 4374 : AIR 1996 SC 484 : 1996 Lab IC 462)."

(ii) AIR 1999 SC 2407:

"11. Strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding

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of guilt even in departmental enquiry proceedings. The Court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of mala fides or perversity i.e., where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. The Court cannot embark upon reappreciating the evidence or weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained. In Union of India v. H.C.Goel (1964) 4 SCR 718 : (AIR 1964 SC 364) the Constitution Bench has held (at p.370, para 23 of AIR):-

> 'the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not."

(iii) 2004 (2) CTC 277 (Madras High Court):

"5. .. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities, vide - Apparel Export Promotion Council v. A.K.Chopra, 1999 (1) CTC 316 : 1999 (1) SCC 759.

6. It is also settled law that in case of disciplinary enquiry the technical rules of evidence have no application. The doctrine of "proof beyond doubt" has no application. Preponderance of probabilities and some material on record are necessary to arrive at the conclusion whether or not the delinquent has committed misconduct, vide Lalit Popli v. Canara Bank, 2003 (3) CTC 494 : 2003 (3) SCC 583.

7. ... Once the petitioner fails to establish as to how he was prejudiced by the denial of reasonable opportunity, he cannot complain violation of principles of natural justice, as per the ratio laid

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down by the Apex Court in State Bank of Patiala v. S.K.Sharma, 1996 (3) SCC 364."

14. The enquiry officer has gone in detail into the whole issue and examined several witnesses and the petitioner also produced his witnesses and cross-examined the Department witnesses. The detailed enquiry report, relevant extracts of the same, have been culled out for appreciating the rival contentions. The authorities have gone into the issue in detail and have come to the conclusion that the charges against the petitioner stand proved and confirmed the same in appeal. There is no ground taken on the quantum of punishment. Hence, there is no scope for this Court to interfere with the orders under challenge.

15. Therefore, I have no hesitation to hold that the challenge in the present writ petition cannot succeed, as the petitioner has failed to establish that the impugned orders are in violation of the principles of natural justice or that they are arbitrary or capricious proceedings. Reasonable opportunity was given to the petitioner who participated in the proceedings without any demur and therefore, there is no case made out to interfere with such proceedings.

16. For the reasons stated above, the writ petition is liable to be dismissed and the same is accordingly dismissed. No costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

cs/ts

To
1. The Chairman-cum-Managing Director,
The New India Assurance Co. Ltd.,
87, M.G.Road, Mumbai.
2. The Appellate Authority (Regional Manager),
The New India Assurance Co. Ltd.,
Obli Towers, 594, D.B.Road, R.S.Puram,
Coimbatore.
3. The Divisional Manager
(Competent Authority),
New India Assurance Co. Ltd.,
Divisional Office,
Jerome Building, II Floor,
Tiruchirapalli.
+ 1 CC To M/s.P.Sukumar, Advocate SR NO.48518

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